

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Elser Wall,

Plaintiff,

v.

NSB East Bonanza LLC d/b/a Taco Bell
 31880,

Defendant.

Case No. 2:20-cv-00391-RFB-DJA

Order

Before the Court is Defendant NSB East Bonanza LLC's motion for a hearing (ECF Nos. 22 and 24), Plaintiff Elser Wall's motion to extend time (ECF No. 25), and her second motion to extend time (ECF No. 33). Defendant sought a hearing to clarify whether Plaintiff would be capable to continue in discovery given her correspondence with Defendant's counsel indicating that health concerns would prevent her from attending her deposition. (ECF No. 22 and 24). Plaintiff then filed a motion to extend her deposition scheduled for September 9, 2021, explaining that health concerns made it impossible to attend her deposition. (ECF No. 25).

The Court set a virtual hearing to take place on October 8, 2021. (ECF No. 29). Plaintiff did not appear. (ECF No. 30). The Court then issued an order to show cause why Plaintiff failed to telephone for the hearing as scheduled. (ECF No. 31). The Court ordered that a copy of the hearing minutes and of the order to show cause be mailed to Plaintiff. (*Id.*). Plaintiff responded to the order to show cause a few days later, explaining that she had not received notice of the hearing. (ECF No. 32). Plaintiff also filed a second motion to extend discovery and her deposition. (ECF No. 33).

The Court re-set the virtual hearing and again ordered that a copy of the order re-setting the hearing be mailed to Plaintiff. (ECF No. 35). The Court warned Plaintiff that "failure to appear for the hearing may result in the imposition of sanctions under Local Rule IA 11-8. Those

1 sanctions may include a recommendation to the district judge that this case be dismissed.” (*Id.*).
2 The Court held the hearing on November 17, 2021. (ECF No. 36). Plaintiff again failed to
3 telephonically connect into the hearing. (*Id.*).

4 Balancing the interests of justice with the prejudice to Defendant and exercising its broad
5 discretion to control its docket, the Court briefly stays discovery to give Plaintiff one last chance
6 to appear. *See FTC v. Gill*, 265 F.3d 944, 954-55, 957 (9th Cir. 2001). On the one hand, Plaintiff
7 has a right to access the justice system, is a *pro se* litigant, and has alleged health conditions that
8 make it difficult for her to participate meaningfully in discovery. On the other hand, providing
9 Plaintiff one more chance to appear and a brief discovery stay will result in relatively low
10 prejudice to Defendant. Because Defendant has requested a hearing and Plaintiff has effectively
11 requested a stay of discovery, the Court grants ECF Nos. 22, 24, 25, and 33, orders a brief stay,
12 and re-sets a hearing to take place at the conclusion of that stay. The Parties are directed to
13 prepare to discuss at that hearing any changes they wish to make to the discovery plan and
14 scheduling order (ECF No. 17) and whether Plaintiff believes she can continue prosecuting this
15 matter.

16 **IT IS THEREFORE ORDERED** that Defendant’s motions for a hearing (ECF Nos. 22
17 and 24) and Plaintiff’s motions to extend (ECF Nos. 25 and 33) are **granted**.

18 **IT IS FURTHER ORDERED** that a hearing is set for **Monday, February 21, 2022 at**
19 **11:00 a.m. via videoconference**. Defense counsel will receive an invitation to appear. Plaintiff
20 may attend the hearing by telephone. Plaintiff must call telephone number: (888) 808-6929 and,
21 when prompted, enter access code: 8129639 five minutes prior to the hearing. The Court will
22 join the call and convene the proceedings. The use of speaker phone or the use of recording
23 devices during the proceedings is prohibited.

24 **IT IS FURTHER ORDERED** that Plaintiff’s failure to appear for the hearing may result
25 in the imposition of sanctions under Local Rule IA 11-8. Those sanctions may include a
26 recommendation to the district judge that this case be dismissed.

27 **IT IS FURTHER ORDERED** that discovery is stayed until **Monday, February 21,**
28 **2022.**

1 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to mail a copy of
2 this Order and the minutes of the November 17, 2021 hearing (ECF No. 36) to Plaintiff's last
3 known address via certified mail with a return receipt requested.

4 DATED: November 17, 2021

A handwritten signature in blue ink, appearing to read 'D. Albregts', is written over a horizontal line.

DANIEL J. ALBREGTS
UNITED STATES MAGISTRATE JUDGE